those features, functions, and capabilities that precisely meet the anticipated demands of the particular market area that the switch will serve. As market needs change, additional features may be added during the life of the switch. If, when it ordered a new switch, BellSouth were to order all of the features, functions and capabilities from the manufacturer, even though there was no demand for certain of those features, functions and capabilities, the cost of the switch would increase substantially. In fact, a 5ESS switch loaded with the features that BellSouth typically orders costs approximately $4,000,000. If BellSouth were to purchase all the additional feature packages that are available from the manufacturer, the cost of the switch would increase by $2,500,000. Ultimately, the result of such a foolhardy decision would be to pass the cost along to a LEC's end users and to CLEC customers.

9. As an example of AT&T's claim that BellSouth has failed to provide individual features of the local switching element, AT&T cites BellSouth's refusal to provide AT&T's UNE order for Call Hold as a stand-alone feature. (AT&T Hamman Affidavit at ¶46). BellSouth orders switches from a number of manufacturers and, while these different switches have many very similar features, functions, and capabilities, there are particular cases in which functions combined on one switch to provide a service could not be similarly combined on another switch. The stand-alone Call Hold feature for residential and small business customers is an example. In the Lucent 5ESS switch with the Call Hold 1 feature version, the user can place a call on hold and then make or receive other calls on the same line. Call Hold 1 requires that User Transfer (or some other switch-hook flash feature) be assigned to the line for Call Hold to work in the

5ESS switch. Another version of Call Hold, Call Hold 2, has its own switch-hook capability but does not function with BellSouth's per use three-way calling central office feature. For this reason, BellSouth has not activated the Call Hold 2 feature in its 5ESS switches. In the Nortel DMS100 switch, the Call Hold feature works differently than in the Lucent 5ESS switch. In the DMS100, the user cannot make or receive other calls on that line until the held call is released. BellSouth's Consumer and Small Business Units decided that this limitation made Call Hold unmarketable to customers served by a DMS100 switch. BellSouth's Consumer Unit decided to offer Call Hold from 5ESS switches only and to pursue having the DMS100 Call Hold feature changed to work like the similar 5ESS feature. A request was made to the DMS100 manufacturer to modify its software so that the switch could provide Call Hold in the same manner as the 5ESS switch. (See Exhibit AJV-2 attached to this affidavit). The manufacturer agreed to do so, but at a cost of $900,000. (See Exhibit AJV-3 attached to this affidavit). The Consumer Unit made a business decision not to proceed, because the forecast of relatively low demand for Call Hold indicated a poor chance of recovering the initial investment.

10. These types of issues illustrate why the BFR process is used to activate new features in a switch. AT&T has not submitted a BFR for the Call Hold stand-alone feature. Instead, AT&T has simply insisted that BellSouth must provide the requested feature at no additional cost to AT&T despite the fact that there are substantial additional costs to add that feature and despite the fact that the feature conflicts with BellSouth's network and has no utility to BellSouth.

11. BellSouth is willing to provide any available switch features to AT&T or any other CLEC. However, as explained above, there may be additional costs involved such as additional right-to-use fees, programming costs to the manufacturer or internal costs to adapt BellSouth's systems to accept an order for the new feature. In addition to the issue of cost, there may be feature interaction restrictions of which the CLEC needs to be aware. For these reasons, BellSouth requires the CLEC to submit a BFR so that all related issues can be explored by the parties.

Other Methods of Access to Network Elements

12. In its October 14, 1997 Order on Petitions for Rehearing, the Eighth Circuit noted that, while CLECs are entitled to unbundled network elements, Section 251(c)(3) "does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services." The DOJ notes that several alternative methods have been suggested that would appear to impose a significantly smaller burden on competition than BellSouth's collocation requirements. (DOJ at 16). Further, although the DOJ in its comments implies that providing existing combinations of network elements would be an acceptable interim solution, the DOJ has repeatedly stated that such provisioning would not be a substitute for providing elements in a manner such that they can be combined by CLECs. (DOJ at 16). BellSouth has not said that collocation is the only method it will ever use for providing CLECs with access to unbundled network elements. As discussed in my initial affidavit at ¶¶76-79 and in Mr. Milner's initial affidavit at ¶¶40-44, BellSouth has dedicated numerous

resources and extensive time to investigating other alternatives. BellSouth will evaluate any future proposals that are proposed; however, to date, each of the alternatives presented to BellSouth have either been technically infeasible or would involve an unwarranted and unlawful intrusion into BellSouth's network. AT&T claims that CLECs should be permitted to obtain access to network elements used to serve existing BellSouth customers through the "logical" or "electronic" separation of the loop and port. (AT&T Falcone Affidavit at Section IV.B.). Under AT&T's plan, BellSouth would keep an existing loop and switch connected upon AT&T's request, and only send an "electronic message" that disables this combination of elements from carrying traffic. AT&T would then send an electronic signal, putting the already-combined elements back into service. AT&T's proposal for electronic re-activation is inconsistent with the 1996 Act and the Eighth Circuit's July 18, 1997 Order.

13. Clearly, use of the so called "recent change" process accomplishes neither the provision of nor the recombination of UNEs. Indeed, the combination would be provided intact. The "recent change" process suggested by AT&T and other parties such as CompTel, WorldCom, Excel and the DOJ merely temporarily disables the combination of elements and subsequently re-enables that same combination. Consequently, the proposed "recent change" mechanism requires BellSouth to provide a combination of elements in violation of the Eighth Circuit's Order. AT&T's claim that "recent change" can be used to provide UNEs and enable CLECs to recombine them is nothing more than thinly veiled semantics designed to evade the Eighth Circuit's ruling. In fact, the "recent change" process is the same function that BellSouth currently uses to suspend and

restore local service to its customers. Once again, these carriers prove the case that "recent change" is nothing more than resale of BellSouth's services.

14. In addition, there are significant network security and reliability issues associated with AT&T's and others' proposed use of the "recent change" process. Use of this process would give CLECs direct access to all of the translations in the switch, both for their customers and for all other carriers' customers. Although AT&T compares its proposal to the "recent change" process used by BellSouth's retail operations, AT&T has conceded in regulatory proceedings that existing networks do not have the capabilities to allow this arrangement because the necessary "firewalls" to protect the network have not been developed. (See Testimony of Falcone in Tennessee Docket No. 97-00309, Vol. VIIE Tr. at 324-325). Indeed, such firewalls could not be developed since, by design, AT&T's proposal requires that it have access to all customers served by the switch. Without the firewalls to protect the network, any CLEC, including AT&T, using the "recent change" process could intentionally or unintentionally make changes (e.g., which features the customer has, to which carrier the customer is PIC'd, to which calling plan the customer subscribes, and even take the line out of service) affecting the end-user customers of other CLECs or of BellSouth. Allowing CLECs use of the "recent change" process as proposed by CLECs would severely endanger the security and reliability of the network.

15. The DOJ suggests that a finding that BellSouth is offering nondiscriminatory access to UNEs cannot be made because BellSouth is not providing requesting carriers with direct, physical access to BellSouth's network to allow the CLEC to

combine the BellSouth network elements in the way the CLECs say they would prefer. (DOJ at 15). BellSouth is providing physical access to its network via collocation which is the only requirement for access to UNEs in the Act. Indeed, the Act is clear that the only obligation on the part of an ILEC in providing "access to unbundled network elements at the premises of the local exchange carrier" is the ILEC's duty to provide collocation. 47 U.S.C § 251(c)(6).

16. Apparently, the DOJ and some CLECs believe that parties other than BellSouth should be given direct access to BST's main distributing frame. (DOJ at 15, AT&T at 17). Such direct access is not reasonable due to the potential risks to the public switched network posed by allowing CLECs to make connections on BellSouth's equipment and facilities in the central office - risks which far outweigh any advantages to the CLECs. The central office is the heart of the public switched network. Not only do the communications for thousands of people and businesses come through a central office, but critical circuits for national security, public safety and emergencies, (e.g., National Security and Emergency Preparedness, Department of Defense, Federal Aviation Administration, 911 and fire and burglar alarms) are concentrated in the central offices. If these critical communications paths are disturbed, major economic and social harm can result. For this reason, BellSouth restricts access to its central office equipment to a small number of highly trained individuals.

17. The integrity and reliability of the public switched network would be jeopardized to the same extent previously discussed even through supervised access by CLECs to BellSouth's distribution frame. The structure of the frame is such that,

even with supervised access, the activities of people working on the frame cannot ever be totally controlled. Terminals on a frame are so compact that someone literally looking over the shoulder of another person cannot ascertain precisely what is being done. Further, supervised access would be costly because the CLEC would have to pay for the technician doing the work as well as for the supervisor. BellSouth is able to protect its investment and customer proprietary/confidential information by holding its employees accountable. BellSouth can exercise no such control over CLEC employees or agents given access to BellSouth's network. If access to BellSouth's network is extended to CLECs, BellSouth will no longer be able to ensure this protection. With BellSouth and CLEC technicians making connections to BellSouth's equipment and facilities, increased troubles for all companies would be probable, and accountability will be impossible. CLEC personnel working in a central office could also eavesdrop on telephone conversations and identify law enforcement wire taps. BellSouth does not allow its vendors access to its distribution frame. Such access is limited to BellSouth's employees.

18. Direct access to BellSouth's main distributing frame or other central office equipment would constitute an unwarranted and illegal intrusion into BellSouth's property. In the Act, Congress specified collocation in response to the *Bell Atlantic Tel. Co. v FCC* decision, 24 F.3d 1441 (D.C. Cir. 1994). At the time that the FCC issued this requirement, the law did not contain express language authorizing the FCC to mandate such access to the facilities of incumbent LECs. *Id.* at 1446. The Court of Appeals therefore vacated the order as arbitrary and capricious on the basis that the law did "not supply a clear warrant to grant third

parties a license to exclusive physical occupation of a section of the LECs' central offices." *Id.*

19. When drafting the Act, Congress was aware of this limitation and, for that reason, expressly provided for physical collocation. See 47 U.S.C. § 251(c)(6); H.R. Rep. No. 104-204, at 73 (1995) ("House Report") ("[T]his provision is necessary... because a recent court decision indicates that the Commission lacks the authority under the Communications Act to order physical collocation.") (citing the previously mention Bell Atlantic decision). This is the Act's only statutory authorization of CLEC entry into the incumbent LEC's premises. Virtual collocation does not provide such entry since the equipment is owned and maintained by BellSouth. Had Congress intended to grant CLECs a further right of access to the facilities and networks of incumbent LECs in connection with the latter's responsibility for providing access to network elements, Congress would have included the necessary "clear warrant" authorizing such access. Congress did not do so, thus putting any further encroachments on BellSouth's network beyond the pale.

Collocation

20. Although numerous parties in this case object to having to collocate in BellSouth's central offices in order to obtain access to unbundled network elements, the Act is clear that incumbent LECs may fulfill their statutory obligations by delivering physically separated network elements to a CLEC's collocation space, and allowing the CLEC to then recombine those elements however it wishes. Indeed, while Section 251(c)(3) generally requires an

incumbent to provide "access to network elements on an unbundled basis" in a manner that permits their combination, Section 251(c)(6) specifically instructs those same incumbents to provide "for physical collocation of equipment necessary for ... access to unbundled network elements." 47 U.S.C. § 251(c)(3) & (6). Intermedia asserts that BellSouth's insistence on collocation to combine UNEs is contrary to law. (Intermedia at 15). Collocation is, however, the only method of access for recombining network elements specifically identified in the Act. It defies reason to contend that Congress specified collocation alone as a method of access to network elements, but also believed that collocation violated Section 251(c)(3). See In re Nofziger, 925 F.2d 428, 434 (D.C. Cir. 1991) ("Legislatures are presumed to act reasonably and statutes will be construed to avoid unreasonable and absurd results"), cert. denied 493 U.S. 1003 (1991). The DOJ points out that the state commission in Florida has rejected BellSouth's argument that CLEC collocation is required in order to combine UNEs. (DOJ at 15 citing Florida PSC Interconnection Order at 52-53). That order is currently under reconsideration. Further, that order specifically dealt with the AT&T and MCI agreements which require BellSouth to provide combinations of elements; therefore, the point the DOJ attempts to make is moot.

21. All the noise that various CLECs and the DOJ make concerning the cost of collocation is apparently their attempt to obfuscate that fact that collocation actually provides an inexpensive way in which to access unbundled network elements for combining by the CLEC. (Sprint at 45, Intermedia at 17-18, DOJ at 13). In my initial affidavit, I attached Exhibit AJV-4 which provided an example of the typical costs that would be incurred by a CLEC to cross-connect BellSouth

provided loops and ports. In that exhibit, I demonstrated that collocation in an unenclosed physical collocation space would cost the CLEC approximately $.20 per DS0 (loop-port combination) per month. Likewise, the same combination could be accomplished through a virtual collocation arrangement for only $.07 per DS0 per month.

Extended Links

22. Intermedia insists that BellSouth must provide an "extended link" as an alternative to collocation. (Intermedia at 20-22). "Extended link" is just another name for the combination of an unbundled loop and unbundled transport. Because unbundled loops and unbundled transport are separate network elements that BellSouth must make available to CLECs on an unbundled basis, requiring BellSouth to bundle or combine them would violate the Act and run afoul of the Eighth Circuit's rulings. The Act specifically requires BellSouth to provide requesting carriers with access to unbundled local loops (47 U.S.C. § 271(c)(2)(B)(iv)), as well as access to unbundled local transport (47 U.S.C. § 271(c)(2)(B)(v)). Furthermore, the FCC Order at paragraph 366 lists local loops and interoffice transmission facilities (transport facilities) as separate unbundled network elements that incumbents are required to provide. As the Eighth Circuit has made clear, the Act does not require BellSouth to provide, or entitle CLECs to receive, combinations of network elements. BellSouth is willing to enter into a separate arrangement with any CLEC for UNE combinations. Such arrangements, however, are not subject to the provisions of Section 252 of the Act and are not required for checklist compliance.

Nonpublished Listing Indicators

23. AT&T complains that is it their "understanding" that BellSouth does not provide nonpublished listing indicators in the "extracts" BellSouth provides of its directory assistance database. (AT&T at 63). AT&T bases its claim on paragraph 11 of BellSouth affiant Coutee's affidavit. However, Mr. Coutee's affidavit states that "DADS includes all eligible BellSouth subscriber listing information (non-published listings are not provided)." (emphasis added). For nonpublished numbers, BellSouth's record layout for the directory assistance database provides the customers' name and a special indicator designating the customer's listing as nonpublished. When a CLEC subscribes to BellSouth's DA database services, the CLEC is provided all information necessary to use the service, including detailed record layout information, indicators and their meaning. There should be no misunderstanding - BellSouth does provide indicators which allow CLECs to properly handle requests for nonpublished listings. BellSouth does not, however, provide the actual nonpublished listing.

III. PRICING ISSUES

Reciprocal Compensation - ISP Traffic

24. Several parties contend that BellSouth has failed to establish just and reasonable reciprocal compensation arrangements for the transport and termination of traffic because BellSouth does not provide reciprocal compensation for traffic originating on its network that terminates to internet service providers ("ISPs") and other enhanced service providers ("ESPs") served by CLECs. (AT&T at 68, KMC at 24-29, Intermedia at 24). AT&T supports BellSouth's position that the

Commission has jurisdiction over ESP traffic because the end-to-end nature of such communications is interstate. (AT&T at 68, fn 23). However, AT&T claims that the Commission has concluded that such interstate traffic should be treated as local. AT&T bases its claim on the fact that the Commission allows ISPs to use local business lines to obtain access to the local exchange for their interstate traffic. In its Notice of Proposed Rule Making in CC Docket No. 89-79 adopted March 30, 1989, the Commission continued "to permit these interstate service providers to use local business lines or other state-tariffed forms of access for their interstate traffic, thereby exempting them from federal access charges." (Order at ¶29). Further, the Commission, in evaluating alternatives, noted that "[w]e could require ESPs to purchase interstate access for their interstate traffic, but exempt ESPs from paying the carrier common line charge...". (Order at ¶31) Obviously, the Commission believes such traffic to be jurisdictionally interstate.

25. While there have been numerous state commission rulings regarding treatment of ISP traffic for purposes of reciprocal compensation, there is no FCC ruling. To the contrary, the FCC has informed the U..S. District Court for the Western District of Texas in a memorandum filed as *amicus curiae* that "[t]he FCC has not yet determined whether competitive local exchange carriers ("CLECs") . . . are entitled to reciprocal compensation for terminating Internet traffic. That issue is currently before the FCC in an administrative proceeding and remains unresolved."

26. Further, a July 21 opinion by the U.S. District Court/Northern District of Illinois, affirming a decision of the Illinois Commerce Commission finding that Illinois

Bell was contractually obligated to pay reciprocal compensation to WorldCom for ISP traffic, noted that "the FCC has not reached a coherent decision on the issue of the compensation of LECs providing Internet access ... due, in part, to the fact that the Internet, as a relatively new development to the telecommunications world, presents unique questions that have not previously been addressed by FCC decisions and policy." (Order at 17). According to the district court, "[a]ny ruling by the FCC on that issue will no doubt affect future dealings between the parties on the instant case." (Order at 18). The bottom line is that, while numerous states have issued rulings on this issue, they all represent only one side of this jurisdictional issue. The FCC, which represents the other side of this jurisdictional dispute, plainly has stated that the issue remains unresolved. Since the FCC has indicated its intent to resolve the issue regarding treatment of ISP traffic for purposes of reciprocal compensation, BellSouth believes that until such resolution occurs, it is under no obligation to pay.

Reciprocal Compensation Payments

27. e.spire claims that BellSouth has refused to pay any reciprocal compensation charges, not just those associated with ISP traffic. (e.spire at 4, 27-28). BellSouth's interconnection agreement with e.spire (formerly ACSI) specifies that there will be no cash compensation exchanged by the parties unless the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis. (ACSI Interconnection Agreement at VI.B.). There is currently a dispute between e.spire and BellSouth concerning whether reciprocal compensation should be paid on ISP traffic. BellSouth contends that such traffic is not eligible for reciprocal compensation. e.spire agrees that the 2 million

minute threshold has not been reached when ISP traffic is excluded. Consequently, no reciprocal compensation payments are due to e.spire in Louisiana.

28. Contrary to e.spire's assertion, it has not attempted to "replace the bill and keep system with the reciprocal compensation arrangements included in other approved BellSouth local interconnection agreements on a going-forward basis." (e.spire at 27). In November of 1997, e.spire proposed to replace its current reciprocal compensation arrangement with another arrangement created by e.spire. The new arrangement proposed that after the 2 million minute threshold was reached in a particular month, all subsequent traffic exchanged would be subject to reciprocal compensation without regard to any threshold. The arrangement proposed by e.spire is not included in any other carrier's interconnection agreement. e.spire's agreement gives it the ability to adopt another carrier's arrangement, not to create a new arrangement during the effective period of its agreement. BellSouth did not agree to that portion of the e.spire proposal. Consequently, the original arrangement is still in effect and, under that arrangement, no reciprocal compensation payments are owed to e.spire in Louisiana. BellSouth has honored and will continue to honor all of its reciprocal compensation agreements. Numerous carriers have been paid reciprocal compensation in accordance with their agreements.

29. Radiofone alleges that invoices it has submitted to BellSouth for mutual compensation payments are unpaid. (Radiofone at 1-2). In fact, BellSouth has paid Radiofone $64,616; however, after determining that the charges were

generated from paging traffic, BellSouth requested reimbursement from Radiofone. Radiofone refuses to respond to BellSouth's calls or letters. Paging traffic does not qualify for mutual compensation payments.

Reciprocal Compensation on Unbundled Switching

30. AT&T states that BellSouth "has not committed to, let alone implemented, any binding surrogate method applicable to all CLECs for reasonably approximating the reciprocal compensation to which purchasers of unbundled switching are entitled." (AT&T Hamman Affidavit at ¶22). This issue is only applicable to purchasers of unbundled switching and/or transport. The method for handling reciprocal compensation on such arrangements is not defined in the AT&T agreement. The agreement provides for such arrangements to be finalized through later discussions. BellSouth has had several meetings with AT&T on this subject, culminating with a meeting on October 2, 1997. The outcome of this meeting was an acceptance by BellSouth and AT&T of an interim billing solution in which BellSouth would not bill AT&T for terminating usage on the unbundled switching element, and AT&T would not bill BellSouth reciprocal compensation for such usage. In addition, there would be no record exchange.

31. In response to AT&T's comments concerning compensation for calls that AT&T terminates which originate on the facilities-based (constructed or UNEs) networks of other CLECs, the outcome is the same as if the call originated from a BellSouth end user. AT&T is not billed for terminating use of the element and, therefore, would not seek compensation from the originating carrier, be it BellSouth or another CLEC.

Reciprocal Compensation - Tandem Switching

32. MCI complains that BellSouth will only pay reciprocal compensation to the CLEC at the end office termination rate even when the CLEC switch has the same functionality and geographic scope as a BellSouth tandem. (MCI at 62). BellSouth position is that if a call does not transit or terminate through a tandem switch (i.e., a switch that passes the call on to another switch to terminate the call), then it is not appropriate to pay reciprocal compensation for tandem switching. Tandem switching is a portion of transport, not end office switching. If MCI's switch is an end office switch as MCI states, it is not performing the tandem function. BellSouth compensates a CLEC for facilities and elements that the CLEC actually uses to terminate traffic on its network; likewise, the CLEC should compensate BellSouth for the facilities and elements that BellSouth actually uses for terminating traffic on BellSouth's network. MCI simply seeks to be compensated for the cost of tandem interconnection when tandem interconnection is not provided. MCI and other CLECs are free to negotiate individual arrangements that reflect specific characteristics of their networks as they deem appropriate.

Access Charge Reform

33. Several parties allege that access charges must be reduced to cost prior to a BOC's entry into the InterLATA market. Reduction of access charges to cost is not included in the fourteen point checklist. If Congress had intended this to be a requirement, Congress would have included it in the checklist. Moreover, reduction of access charges to cost would eliminate a substantial source of

implicit support for universal service. As the Eighth Circuit noted in its August 19, 1998 Order regarding the FCC's Access Charge Reform proceeding, "it is clear from the [1996] Act that Congress did not intend all access charges to move to [forward-looking] cost-based pricing, at least not immediately." Competitive Telecomms., 117 F.3d at 1072. (Order at 54).

34. BellSouth has incentives to continue to reduce access charges toward cost-based levels. The Louisiana Price Regulation Plan under which BellSouth has been regulated since 1996 requires a three-year cap on intrastate switched access rates and a limit on potential increases thereafter. However, with competition for access, BellSouth envisions decreases rather than increases in switched access levels. It is in BellSouth's interest to remain competitive with its access services because many customers, particularly large business customers, have alternatives that enable them to bypass BellSouth's access services. Further, interstate rates will likely continue to decrease as the Eighth Circuit's August 19, 1998 Order affirmed the FCC's decision to "eliminate implicit subsidies embedded in interstate access charges prior to the full implementation of a new, explicit mechanism for universal service support." (Order at 30).

Price Squeeze

35. AT&T alleges that BellSouth could attempt to engage in a "price squeeze" if BellSouth and its retail competitors charge the same price for their retail long distance service, but the competitor is forced to pay a higher price for the access service (assuming that it must purchase from BellSouth) than BellSouth pays itself for use of that facility. (AT&T at 91-92). However, when BellSouth is

allowed into the interLATA, interexchange services market, BellSouth will be required, under Section 272 of the Act, to charge its long distance affiliate the same access rates it charges any other carrier - a requirement that is generally referred to as "imputation."

36. In any event, the FCC noted on page 26 of its Memorandum Opinion and Order in Report No. LB-96-32, released January 31, 1997, that - should the BOCs attempt such a price squeeze -

> "under the provisions of the 1996 amendments to the Communications Act, new entrants or other competitors would be able to defeat that scheme. For example, under the provisions of section 251, a competitor could purchase the interLATA service on a wholesale basis or purchase unbundled network elements to compete with the [BOC's] offering. As long as the incumbent LEC is required to offer unbundled elements and resale of retail services, an attempted price squeeze is unlikely to be an effective anti-competitive tool."

Aside from the protection in the Act and other law, in the unlikely event it was attempted, a price squeeze would not force any of the major long distance carriers' sunk network capacity to exit the market. Even if a long distance carrier were to exit the market, the capacity that it had built could be purchased at a discount by another carrier. The new carrier would reintroduce this capacity and have a lower cost structure than the original carrier. Consequently, the new carrier could sell service at a lower price. Given these circumstances, any benefit that BellSouth could hope to gain via a price squeeze would not materialize since it would still have to compete against the lower prices of the new carrier.

Pricing of UNEs the CLEC Combines

37. Sprint claims that BellSouth is concealing its true policies on UNEs, and in fact intends to impose resale rates for purchases of end-to-end UNEs where the CLEC performs the combining. (Sprint at 46). The SGAT's UNE rates apply to any order of UNEs, except when the CLEC asks BellSouth to provide the UNEs on a preassembled, "switch-as-is" basis and thus effectively orders a retail service for resale. (SGAT §§ II.F., XIV.A.). Before the Eighth Circuit ruling, the LPSC found that UNEs combined by a CLEC that together replicates a retail service would be offered at wholesale rates (i.e., retail less discount). As a result of the Eighth Circuit decision, however, BellSouth is required to offer UNEs combined by the CLEC at cost-based prices. Some interconnection agreements signed before the Eighth Circuit ruling contain language stating that combinations of UNEs that replicate a retail service will be priced as resale. Agreements with those provisions specify that the agreement will be changed only upon a final, non-appealable order of a Court or regulatory agency when such ruling conflicts with the existing agreement language. Notwithstanding this provision, BellSouth offered via a letter dated June 16, 1998 to amend any agreement to incorporate the Eighth Circuit Court's ruling. BellSouth's letter is attached to this affidavit as Exhibit AJV-4. To date, no CLEC has accepted BellSouth's offer. The DOJ's complaint the BellSouth's interconnection contracts have not been amended to provide for cost-based pricing of UNEs to be used in combinations rests on the CLECs, not on BellSouth. (DOJ at 11, fn. 19). BellSouth cannot unilaterally amend its interconnection agreements. As long as these agreements remain unchanged, BellSouth will provide UNE combinations under these agreements; however, any combination of UNEs that replicates a retail service, whether

combined by BellSouth or by the CLEC, will be treated and billed as resale as state in the agreements.

38. AT&T's assertion that BellSouth has not developed specifications, methods, and procedures to facilitate recombining is simply baseless. (AT&T Hamman Affidavit at ¶9). First, the SGAT clearly states what BellSouth will provide. As indicated in the SGAT, "A requesting carrier is entitled to gain access to all of the unbundled elements that when combined by the requesting carrier are sufficient to enable the requesting carrier to provide telecommunications service." (SGAT § II.F.). This plain language means that any and all unbundled network elements are available to the CLECs to combine as they desire. AT&T's implication that the SGAT limits CLECs to combining only loops and ports is equally wrong. There is no such restriction in the SGAT, nor is it BellSouth's policy to impose such a restriction. Furthermore, AT&T would currently obtain facilities from its approved agreement, not from BellSouth's SGAT. The current BST/AT&T Louisiana Interconnection Agreement enables AT&T to obtain combinations of network elements. (AT&T/BellSouth Louisiana Interconnection Agreement, § 30.5).

39. Second, the methods used and the terms governing provision of UNEs for combination by CLECs are contained in the SGAT. BellSouth does not determine how a CLEC will use the UNEs BellSouth delivers, and there is no difference between UNEs, or associated methods and procedures, when provided to a CLEC for use with its own facilities versus UNEs that are provided to be combined with each other by the CLEC. If a UNE can be physically separated,

BellSouth will deliver it on a separated basis. If a UNE cannot be physically separated, access will be provided in the same manner as for use on an uncombined basis. Whether a CLEC uses UNEs in isolation or combines them, access will be provided to the UNEs in the same way. If the CLEC decides that it needs assistance in combining or operating the combined UNEs, BellSouth will negotiate with the CLEC to provide the necessary capabilities, functions or features. BellSouth provides all of the network elements that the FCC and LPSC have ordered it to provide. No CLEC has requested additional facilities or services to facilitate its ability to combine UNEs. Without CLEC input, it would not be sensible for BellSouth to second guess CLEC needs and develop processes that CLECs may or may not desire.

Paging Facilities Charges

40. The Paging and Messaging Alliance of the Personal Communications Industry Association ("PMA") asserts that BellSouth is violating section 251(b)(5) of the Act by charging a class of Commercial Mobile Radio Services ("CMRS") providers for traffic originated on the LEC network. (PMA at 2). Later, at page 5 of its comments, the PMA states that "BellSouth continues to charge paging providers in Louisiana for the facilities used to transport BellSouth-originated traffic." The FCC's rules at Section 51.703(b) state that "a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." 47 C.F.R. § 51.703(b) (emphasis added). Further, the Commission's order states that "a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge." Local

Competition Order, ¶ 1042 (emphasis added). BellSouth does not charge originating access charges to CMRS providers; therefore, BellSouth has no such charges to "cease", and is in full compliance with this Commission's rules and regulations. The C.F.R. language referenced above, moreover, clearly refers only to traffic and makes no reference to facilities ordered by the paging carriers from a LEC. BellSouth is providing interconnection facilities to paging providers through approved state tariffs. Until such time as paging providers either disconnect the services obtained through these tariffs or an interconnection agreement is in place governing the provision of interconnection facilities, BellSouth will continue to charge tariffed rates for interconnection and transport facilities. In that regard, section 251(c)(1) imposes upon both BellSouth and a paging provider a duty to negotiate in good faith in accordance with section 252 of the Act the particular terms and conditions of agreements to fulfill the duties described in section 251(b)(5). To date, however, BellSouth has not had a single request for such negotiation from a paging provider operating in Louisiana.

Voice Messaging Services Not Discounted

41. The Telecommunications Resellers Association ("TRA") claims that BellSouth has an obligation to offer voice messaging services for resale at wholesale rates. (TRA at 29). Voice messaging services consist of centralized information storage and retrieval. Under FCC rules, these services are classified as "enhanced services" rather than as "telecommunications services" (47 U.S.C. § 153(46) - check this cite). Therefore, while BellSouth offers voice messaging for resale, it is not required to offer this enhanced service at wholesale rates under sections 251, 252 or 271.

Special Construction Charges

42. MCI complains that there are no rates for the facilities BellSouth "insists on" substituting when loops are currently served by IDLC facilities and neither copper facilities or NGDLC are available. (MCI at 75, MCI Wood Affidavit at ¶31-33). As discussed in Mr. Milner's initial affidavit at ¶¶ 59-61, in these limited instances, there are two possible outcomes. In the event that BellSouth must advance planned capacity in order to provision MCI with the requested unbundled loop, BellSouth will charge MCI for the time value of money associated with advancing the capital facilities placement. On the other hand, if BellSouth determines that no additional growth facilities would otherwise be required, then BellSouth will charge MCI for both the capital and the expense associated with the facilities to be constructed. In either case, MCI will be charged only the additional cost incurred by BellSouth to provide the facilities.

43. The special construction charges arising from these two situations could vary widely. By definition, each situation would be unique. Therefore, BellSouth simply cannot place limits or provide guidelines on the dollar amount of such special construction charges because it has no way of knowing, prior to receiving the CLEC's request, what those charges will be. If one of these aforementioned situations occurs, BellSouth will calculate the applicable special construction charges. Upon request, BellSouth would provide to the CLEC the details of how such charges were developed. Application of special construction charges is not unique to CLECs. Special construction tariffs on file with the state commissions permit such charges to end users as well.

Subscriber Line Change Charge

44. TRA complains that BellSouth charges resellers a subscriber change charge when a BellSouth customer converts to the reseller's service, but BellSouth does not pay the reseller a similar charge when the customer switches back to BellSouth. (TRA at 28-29). There is nothing in BellSouth's resale agreement with any CLEC that speaks to a charge for switching a customer from one entity to another. The resale agreement does, however, state that resold services are subject to the same terms and conditions as specified in the appropriate section(s) of BellSouth's tariffs. This means that when a reseller resells a BellSouth service, the reseller is subject to the same terms and conditions for the resold service as is specified in the applicable tariff. These terms and conditions contain rates and charges for transferring responsibility for the service. These charges less the wholesale discount are charged to the reseller. The resale agreements do not cover any situation where BellSouth would resell the service of a reseller. When a customer switches from a reseller to BellSouth or to another CLEC, the customer is simply leaving the reseller – the reseller is not reselling that service, and BellSouth is not reselling any CLEC services. Accordingly, BellSouth will not pay any such charges. As clarification, BellSouth does charge an end user customer that returns to BellSouth the same subscriber change charge (but without application of the wholesale discount) that it applied to the reseller when the customer initially switched its service.

Subscriber Line Charges

45. Regarding TRA's and OmniCall's issue that the subscriber line charge (SLC) should be billed to a CLEC depending upon the end user's status as a single line or multiline customer, BellSouth agrees that this is the appropriate application of the SLC. BellSouth will investigate and if it is determined that the multiline SLC has been applied incorrectly to single line customers, BellSouth will correct the billing and refunds will be provided. (TRA at 29, OmniCall at 4).

INP Cost Recovery

46. MCI complains that BellSouth's charges for interim number portability do not comply with the FCC's cost recovery requirements. (MCI at 83). MCI has not demonstrated that the rates for interim number portability determined to be appropriate by the LPSC are unlawful. The United States Court of Appeals for the Eighth Circuit concluded that the Federal Communications Commission does not have jurisdiction to issue pricing rules for interconnection, and accordingly vacated the rules originally promulgated by the FCC. Iowa Utilities Board, 120 F.3d 753. The FCC's jurisdiction over number portability cost recovery is thus limited by Congress to the type of number portability required under section 251, and defined at section 153(30) of the Telecommunications Act. The Commission has determined that transitional measures of number portability, Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (DID), or any other comparable and technically feasible method, 47 C.F.R. ¶ 52.27, do not constitute number portability under section 153(30) of the Telecommunications Act because they violate the performance criteria for number portability established by the FCC. 11 FCC Rcd 8352, 8411 (1996) at ¶ 115. Thus, any authority granted to the Commission by Congress to establish cost recovery mechanisms for number